

December 2, 1983

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MEMORANDUM

TO: Philip Morris/Barclay Files

FROM: Hadrian R. Katz

RE: November 30, 1983 Meeting With Judy Wilkenfeld

I met at 2:00 p.m. on Wednesday afternoon with Judy Wilkenfeld to discuss Philip Morris' proposed modification of the FTC smoking machine holder. Also present was Toni Guerito, who has just joined the cigarette advertising staff. She is apparently replacing Elaine Kolish, who has been assigned elsewhere, as the person responsible for summarizing the various industry comments and drafting some response. She is brand new to this -- she indicated clearly during the meeting that she does not understand ordinary cigarette dilution, let alone the special issues raised by Barclay -- and is not very likely to accelerate the pace of the staff's work.

Wilkenfeld said that her one basic question was whether we could come up with a modification that would bring Barclay's delivery more nearly in line with the results of the various ventilation experiments. In response,

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I explained at some length that we had not set out to develop a modification that resulted in any particular tar level for Barclay, but rather attempted to close the general loophole in the FTC method resulting from the fact that human smokers have lips and smoking machines do not. Our scientists attempted to develop a holder (1) that yielded consistent results for every brand from pack to pack, (2) that yielded results for undiluted or conventionally diluted cigarettes that were no different from the results obtained with the old holder, and (3) that was inexpensive and easy to use. The modification that we proposed is the best design that we have been able to develop to meet these criteria.

Our tests showed Barclay KSSP measuring about 8 mg. on the modified holder. A different pack on a different day measured in a different laboratory might differ by a milligram or two, and for that reason it probably made sense for the FTC to do its own testing with the proposed new holder. In any event, given that the holder was not and really should not be reverse engineered to come up with any particular number for Barclay, the results obtained really were remarkably

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consistent with the ventilation data and all the other evidence obtained during the course of the Commission's Barclay investigation. We discussed the fact that the 3 to 7 mg. estimate was merely a compromise based on the guesses of the consultants that was intended by the FTC not as some scientific measurement of Barclay's tar delivery, but merely as a number that Brown & Williamson could be allowed to advertise as an interim measure if it wanted a number to advertise. Under the circumstances, it would distort the history of the Barclay investigation if the rough 3 to 7 mg. estimate were viewed as an impediment to adoption of a reasonable new holder that satisfied all the important criteria.

Wilkenfield asked whether the hole in the rubber insert could be made larger. I explained the manner in which the modified holder works, not by sealing the Barclay channels but by partially blocking them, and said that we had looked into enlarging the hole, and had encountered two problems. First, existing Barclay cigarettes are far from uniform. If the hole were made larger, the amount of channel left unblocked would vary substantially from cigarette to cigarette, probably

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resulting in very different Barclay tar deliveries from port to port. Second, and perhaps more fundamentally, a larger hole would simply mean a new loophole. Brown & Williamson could simply redesign Barclay, or some other manufacturer might introduce some other brand, with redesigned channels that fooled the new machine. It made sense to close the loophole once and for all, and the only way to do that was to make the hole small enough that any dilution system designed to be unobstructed in the new holder would also necessarily be unobstructed in a smoker's mouth.

Most of our meeting was spent on this point, and the discussion seemed to go quite well. Wilkenfeld said that at least two of the consultants (apparently Bock and Guerin) have become increasingly hostile to Barclay, and would like to see a holder that brought the cigarette's delivery as high as possible. She thought there would be no difficulty obtaining their concurrence that the proposal we recommended was reasonable. Pillsbury will do some testing with the holder to assess its convenience, and Guerin may do some testing to assess Barclay's delivery, and to see if shaving the hole accomplishes anything useful.

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We discussed a few other points more briefly. Wilkenfeld said that she has received requests from certain persons that did not comment in response to the FTC's solicitation the first time around, asking the Commission to reopen the comment period so that they may file comments. She implied that those comments would relate only to the compensation issue, not to Barclay, and said that she could reaffirm Muris' firm assurances that the modification of the holder to deal with the Barclay problem would move along without having to await developments with respect to compensation. (I do not recall ever hearing Muris say anything about that, but this is consistent with what Wilkenfeld told Copenhaver last week.)

I asked Wilkenfeld when we could expect to see another FTC tar and nicotine report. She said that one is in the works, but she did not seem to have any information regarding how close it was to publication. She did say that she could personally guarantee us that if another report is released, it will include an appropriate reference to Barclay's 3 to 7 mg. estimated delivery, in an accompanying press release if not in the report itself.

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She said that the staff would enjoy writing such a comment, and there would be no difficulty getting approval from the Commission.

Whether the FTC would cross-appeal from Judge Gesell's decision would be decided by Carley. The staff has made a recommendation, but Wilkenfeld refused to discuss the matter further. I asked about Kool Ultra, and suggested that at the least a letter from the Commission to Brown & Williamson might be in order. Wilkenfeld said that no one had thought about Kool Ultra for a while, but she would consider the matter. She indicated that a staff recommendation with respect to modifying the smoking machine might include something appropriate about Kool Ultra.

I raised the possibility of a second comment period prior to modifying the smoking machine. Wilkenfeld seemed to have some interest in the idea, and said that it might solve some procedural concerns of the staff.

The meeting lasted about 75 minutes, and was quite cordial. Further delay in adopting a modified holder, however, would not be surprising.

cc: Abe Krash
Jerome I. Chapman

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